

CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795 <div style="text-align: center; font-size: 24pt; font-weight: bold;">STAFF REPORT</div>	Hearing Date/Agenda Number P.C. February 13, 2002 Item 4.c.	
	File Number RA 01-06-003	
	Application Type Appeal of the Director's Decision to Grant a Reasonable Accommodation	
	Council District 10	
	Planning Area Almaden	
	Assessor's Parcel Number(s) 577-13-075	

PROJECT DESCRIPTION		Completed by: Sally Notthoff Zarnowitz
Location: 6136 Meridian Avenue		
Gross Acreage: 0.2	Net Acreage: 0.2	Net Density: 5 DU/AC
Existing Zoning: R-1-5 Residence	Existing Use: Clean and Sober Living Environment	
Proposed Zoning: No Change	Proposed Use: Reasonable Accommodation for Clean and Sober Living Environment	

GENERAL PLAN		Completed by: SNZ
Land Use/Transportation Diagram Designation Low Density Residential (5.0 DU/AC)		Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING		Completed by: SNZ
North:	Single-family detached residential	R-1-5
East:	Single-family detached residential	R-1-5
South:	Single-family detached residential	R-1-5
West:	Single-family detached residential	R-1-5

ENVIRONMENTAL STATUS		Completed by: SNZ
<input type="checkbox"/> Environmental Impact Report found complete <input type="checkbox"/> Negative Declaration circulated on		<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete

FILE HISTORY		Completed by: SNZ
Annexation Title: Guadalupe No. 18		Date: Nov. 8, 1978

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
<input type="checkbox"/> Approval <input type="checkbox"/> Approval with Conditions <input type="checkbox"/> Denial <input checked="" type="checkbox"/> Uphold Director's Decision	Date: _____	Approved by: _____ <input type="checkbox"/> Action <input type="checkbox"/> Recommendation

APPLICANT	OWNER
Nancy Wilson/Rainbow Recovery P.O. Box 36024 San Jose CA 95123	Andrew Kubica 576 Calpella Drive San Jose CA 95120

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: SNZ

Department of Public Works

None received.

Other Departments and AgenciesPolice Department, Code Enforcement and Santa Clara County District Attorney's Office

GENERAL CORRESPONDENCE

See Notice of Permit Appeal received from Nicholas P. Petredis dated January 10, 2002, correspondence received from neighborhood residents, and supplemental information from applicant.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The matter under consideration is an appeal of the Director's decision to grant a Request for Reasonable Accommodation from Title 20 Section 20.24.020 of the San Jose Municipal Code, which restricts the permitted uses in the R-1-5 Residential Zoning District to single-family residential uses and to residential care or service facilities for six or fewer persons with one or two resident staff as provided under state law.

On June 13, 2001, Nancy Wilson of Rainbow Recovery submitted a Request for Reasonable Accommodation for a Sober Living Environment (SLE) for a total of 25 residents including 2 resident staff in a single-family dwelling at 6136 Meridian Avenue. The facility would be intended for residents in recovery from alcohol addiction and chemical dependency. Rainbow Recovery's program focuses their services on helping mothers recover and eventually reuniting them with their children. The request for Reasonable Accommodation is primarily to allow the children to stay with their mothers. The applicant has indicated that approximately 25-30% of the overall number of residents will be comprised of children.

The subject site parcel is 8,850 square feet in size and is developed with a 3,075 square foot, two-story house. The house contains 7 bedrooms, 4 bathrooms, a family room, living, dining room and kitchen. The house previously contained a two-car garage which was converted to bedrooms with appropriate permits in May 2000. A large patio room extending into the rear yard constructed without benefit of permit by the previous property owner has recently been demolished by the applicant. The subject property is surrounded by single-family houses on all sides.

A community meeting had been conducted by the applicant. Staff had not been notified of the meeting and is therefore unable to report on specific issues that were discussed.

On October 5, 2001, the Director of Planning issued a "Proposed Determination for Reasonable Accommodation" which granted a slightly-reduced occupancy to allow for a total of 18 occupants including two resident staff, provided that no more than five residents would be licensed drivers (including staff). This determination was based on an analysis of the proposed operation of the facility, including floor plans and site plans submitted. See analysis for discussion regarding rationale for final determination about occupancy limitations.

Neighborhood residents requested that the Director of Planning review the proposal at a public hearing.

A properly-noticed public hearing was subsequently requested and held on October 17, 2001. The Director of Planning received public comments and testimony. Neighbors testified that they had been subjected to unacceptable behavior and language from occupants of this over the last year. They spoke in opposition to the request, giving testimony which included their concerns about overcrowding of individuals within the household, the lack of facilities within the residence, the lack of supervision for children of clients, and the erosion of the quality of life in the neighborhood. A petition with signatures against the request was also provided.

The hearing was continued to November 14, 2001, to allow staff to evaluate and research additional testimony by the neighboring community and the applicant, particularly the calls for Police service.

At the hearing on November 14, 2001 the neighborhood's attorney spoke against the decision because of the facility's impact on the single-family neighborhood, and because the neighborhood felt an insufficient application had been submitted by the applicant.

On December 14, 2001, the Director of Planning issued a Final Director's Decision granting Reasonable Accommodation to allow a total of 18 occupants comprised of up to 16 residents and two resident staff provided that no more than 5 of the total number of residents have driver's licenses. This final determination was based on the information contained in the application and facts submitted to date, which demonstrate that accommodation of the proposed number of residents will meet the City's ordinances and Guidelines for Reasonable Accommodation. A total of 18 occupants (16 residents plus two resident staff members) can be accommodated at the location based on square footage requirements and in order for the Request to comply with Building and Housing Code Requirements. See the analysis section below for additional discussion.

An Appeal of the Director's Final Decision was filed by Nicholas P. Petredis on January 10, 2002, on behalf of neighbors objecting to the granting of the Request for Reasonable Accommodation. A copy of the appeal letter is attached. The primary grounds for the appeal are based on the opinions provided by Mr. Petredis that the Director's decision to grant the request for reasonable accommodation was not properly supported by the applicant's application, testimony, or written administrative record, and should therefore have been denied. See analysis for additional discussion.

ENVIRONMENTAL REVIEW

The Director of Planning, Building and Code Enforcement has determined that this project is exempt from further environmental review pursuant to Section 15301 of the California Environmental Quality Act since the proposal involves only a negligible expansion of an existing facility or use.

GENERAL PLAN CONFORMANCE

The proposed Reasonable Accommodation for a total of eighteen residents for a clean and sober living environment is consistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designation of Low Density Residential (5.0 DU/AC) in that no expansion of the existing structure or increase in the number of dwelling units is proposed.

COORDINATION

Preparation of this memorandum was coordinated with the City Attorney's Office.

ANALYSIS

Unlike many decisions made by the City affecting the use of private property, the granting of Requests for Reasonable Accommodation is not equivalent to a land use permit. There are several State and Federal regulations that limit or prohibit the discretionary powers of local municipalities with regard to affording reasonable accommodations from land use requirements in order to make housing opportunities available to disabled persons. The analysis section of this report provides an overview of these regulations and relevant City ordinances and policies that provide the basis for decisions on these matters. A copy of a memorandum related to this issue dated November 2, 2001 from the City Attorney's Office to the City Council is attached as background.

Overview of Laws Pertaining to Requests for Reasonable Accommodation

Federal Fair Housing Act. The Federal Fair Housing Act Amendments, adopted in 1988, prohibit housing discrimination based upon disabilities or handicaps. Recovering drug addicts and alcoholics are specifically included in the definition of "handicapped" under this law. Most residents of Residential Care Facilities and Residential Service Facilities fall within the protection of these laws. These laws drastically limit the ability of cities to use their discretionary land use authority to regulate group living arrangements involving disabled persons. Both federal and state laws expressly make it unlawful to discriminate through public or private land use practices, decisions, and authorizations. Discrimination includes restrictive covenants, zoning, laws, denials of use permits, and other actions that make housing opportunities unavailable. Under the Federal Fair Housing Act, local governments are required to make "reasonable accommodation" to the needs of persons with disabilities in the application of its policies, procedures and regulations.

Proposition 36. Proposition 36, also known as "The Substance Abuse and Crime Prevention Act", was passed by 61% of California voters on November 7, 2000 and became effective on July 1, 2001. The intent of this initiative is to divert first- and second-time non-violent defendants, probationary and paroled individuals charged with simple drug possession or drug use offenses from incarceration by requiring residency into community-based substance abuse treatment programs. The passing of this initiative has created the need for additional sober living environments (SLEs) on a statewide basis and has likely increased the number of recent Requests for Reasonable Accommodation in San Jose.

Group Home Ordinance. In 1998, the City Council adopted the "Group Home Ordinance" in order to bring the San Jose Municipal Code into compliance with federal and state legislation which requires that local zoning regulations not discriminate against persons with disabilities. Section 20.160.010 of the Zoning Code states that it is the policy of the City of San Jose to provide reasonable accommodation for persons with disabilities seeking fair access to housing in the application of its zoning laws, policies, and process. The principle of reasonable accommodation is an explicit requirement of the Federal Fair Housing Act.

Subsequently incorporated into the Zoning Ordinance in February 2001, the ordinance establishes the procedures for making a determination about the reasonableness of a requested accommodation and identifies the specific factors that must be considered prior to granting an accommodation.

Santa Clara County Alcohol & Drug Residential Facilities Certification. As a result of the passage of Proposition 36, facilities such as those being requested are required to obtain approval from the District Attorney's (DA) Office under the Santa Clara County Alcohol & Drug Residential Facilities Certification Program. Under County certification, the DA's Office is responsible to monitor operation of

the facility in order to compliance with applicable laws. The applicants have indicated that they have applied to modify their certification for this location which was originally issued by the District Attorney's Office on September 21, 2000. The change to the certification is pending the outcome of the granting of this accommodation.

Staff Response to Appeal of the Reasonable Accommodation Decision

As identified in Mr. Petredis' letter of appeal, the primary issues of concern are regarding the technical formal documentation of facts to support findings rather than with regard to the identification of specific concerns about the proposed use and/or impacts to adjacent uses. Mr. Petredis has also filed a similar appeal of the Director's decision to grant a Request for Reasonable Accommodation for a proposal located at 2990 Kilo Avenue which will be considered at the same Planning Commission hearing as the subject proposal.

As previously indicated, the Federal and State laws pertaining to the Fair Housing Act, pre-empt local jurisdictions from imposing regulations that would preclude or discriminate against group living arrangements involving "disabled" persons. Requests for Reasonable Accommodation are *not* land use permits. Therefore they cannot be subject to any conditions such as those which might be issued for Conditional Use Permits or other discretionary land use permits. For this reason, the Zoning Ordinance requires the less restrictive "consideration" of certain factors rather than the making of required findings before the granting of a request for reasonable accommodation.

Consideration of the eight (8) factors as established under Zoning Ordinance and noted below are designed to elicit and consider the factual basis for the decision, and further provide a basic test for reasonableness. Pursuant to the Zoning Ordinance, consideration the following factors are to be made on a case-by-case basis prior to the granting of a Request for Reasonable Accommodation:

1. Special needs created by the disability.
2. Potential benefit to the residents that can be accommodated by the requested modification.
3. Potential impact on surrounding uses.
4. Physical attributes of the property and structure.
5. Alternative accommodations which may provide an equivalent level of benefit to the applicant.
6. In the case of a determination involving a single-family dwelling, whether the household would be considered a single housekeeping unit if it were not using special services that are required because of the disabilities of the residents.
7. Whether the requested accommodation would impose an undue financial or administrative burden on the City.
8. Whether the requested accommodation would require a fundamental alteration in the nature of a City program.

Since the appeal letter focuses on the adequacy of "considerations" that were identified in the Director's Final Determination of Reasonable Accommodation, for purposes of clarity, this section of the report will be structured to identify the "eight consideration factors" for approval with inclusion of excerpts or summaries from the appeal letter that are relevant to each factor. A complete copy of the letter of appeal is also attached.

Factors 1 & 2: Special Needs and Benefits of the Accommodation

Based on the passage of Proposition 36, the voters of California have mandated the diversion of first- and

second-time non-violent defendants, probationary and paroled individuals charged with simple drug possession or drug use offenses from incarceration by requiring residency into community-based substance abuse treatment programs. The District Attorney's Office has indicated that such eligible individuals will need to participate by residing at such facilities for periods up to about six months in order to achieve successful rehabilitation. Further, the DA's Office has indicated the need to establish a substantial number of new facilities beyond the number which currently exist in order to provide supervised, short-term residential environments to comply with the mandate. Coupled with the fact that the Fair Housing Act recognizes that such individuals that are required to participate in such programs are determined to be "disabled", the Director can adequately deem that appropriate consideration has been made in that special needs are created by the disability. Further, there is a benefit to the residents that would be accommodated by the granting of the request by providing an opportunity of housing that might not otherwise be as affordable.

The appellant has indicated in his letter under item "A" that there has not been substantial evidence in the administrative record to justify the claim that the alternative accommodation for (18) eighteen residents is necessary to make housing available to the persons on whose behalf the application is made.

Factor 3: Potential Impact on Surrounding Uses.

In assessing this factor, the Director must consider the potential impact on surrounding uses. More specifically, in this instance, an appropriate assessment would evaluate the impacts of such a facility which might be substantially different than those which would ordinarily be created by the "typical" occupancy of the existing house.

In this case, the Director has determined that parking impacts caused by an increase in the number of residents could, if not appropriately restricted, impact adjacent uses. The subject property has the physical ability to accommodate two parked cars in the driveway apron in front of the former garage, two cars along the side yard in a tandem configuration, and one car along the curb in front of the subject residence. A fire hydrant near the northwest corner of the site precludes the lawful parking of any additional cars in front on the property. The applicant originally proposed a greater amount of the side yard to be used to accommodate parking. Staff felt that tandem parking involving more than two vehicles would be logistically impractical and contrary to that which would be typically occur for houses on properties with long driveways extending along the side of the property.

Any number of regularly-parked cars in excess of five (5) could arguably affect or impact an adjacent property. It was for this reason, a limitation was included in the accommodation that the number of licensed drivers residing in the subject house (including staff) be limited to five so that parking would not visually or physically impact adjacent residential uses. The applicant has indicated that because of the nature of the proposed occupancy, many of the potential residents will not be allowed or able to drive due to either the suspension of driver's licenses or economic inability to afford a private vehicle. The applicant has further stated that the restriction of occupancy to no more than five licensed drivers would be feasible and not pose any undue hardship.

The appellant has indicated under item "B" in the appeal letter that use of the side yard for parking is inappropriate. Staff has determined that the amount of front yard paving is less than the requisite 50% maximum per the Zoning Ordinance and that the oversized side yard is of adequate size and proportion to accommodate additional parking. Further, it is not uncommon for similar properties to use such areas for lawful parking of extra vehicles, boats or recreational vehicles. Several site visits by City Staff at various hours including evening and weekend periods, have consistently demonstrated that there is no evidence that

the existing facility creates any parking impact in the neighborhood in that there were never any occasions observed where all driveway and adjacent curbside parking were fully utilized .

The appellant has also indicated under item “D” in the appeal letter that no standard is set forth in which to determine an over-concentration of facilities of residential care homes and that no analysis or survey was performed. Since residential care and service facilities of six (6) or fewer are allowed by right in the R-1-5 Residence Zoning District with no planning discretion, there is almost no way to document the proximity of the nearest SLE facility(s) not subject to a Reasonable Accommodation request. Therefore, this is not a factor in our determination of over-concentration.

Factor 4: Physical Attributes of the Property and Structure

The Director must consider the physical attributes of the property and structure to make a determination of the appropriateness of a facility for the number of occupants in which accommodation is being requested.

The City’s Housing Codes and the Uniform Building Codes identify a formula, whereby the appropriate maximum number of occupants of a residential structure can be determined based on the size (square footage). Based on the review of the floor plan and room size calculations provided by the applicant and subsequent application of the Housing Code requirements, the size and configuration of the subject house totaling 3,075 square feet can accommodate a maximum of 18 residents.

Section 17.20.270 of the San José Municipal Code and Section 503.2 of the Uniform Building Code, 1994 edition, establishes as minimum requirements (excluding closets) 70 square feet of sleeping area for two persons, 120 square feet of sleeping area for three persons; 170 square feet of sleeping area for four persons and an additional 50 square feet of sleeping area is required for each additional person.

The subject property includes seven (7) bedrooms consisting of 140-, 130-, 139-, 160-, 105-, 105- and 362-square feet. The house also includes four bathrooms, a living room, family room, dining room and kitchen. Based on the methodology above, the structure could theoretically accommodate 23 people, however, the building code limits the number of second floor occupants to a total of nine, unless there is a secondary stairway for exiting. The existing structure does not have a secondary stairway and therefore no more than nine (9) second-floor residents can be allowed.

The Housing Codes do not identify specific size requirements for the size of non-bedroom areas, but the subject house has a number of rooms for general living uses to accommodate 18 people, albeit perhaps not comfortably in any single room at any given time. The rear yard, comprised of 2,700 square feet provides, open space that would be equivalent (or more), from a person-to-open space ratio, as compared to many newer, small lot single-family developments with a family of four.

The City’s Guidelines for Review of Requests for Reasonable Accommodation allows the City to deny a request if it is determined that the building or additions were constructed without benefit of permit. The existing house originally included a patio room addition of questionable legality at the time the house was purchased by the applicant. This addition has since been removed by the applicant and appropriately factored into the final determination by the Director.

Factor 5: Alternative accommodations that may provide an equivalent level of benefit to the applicant.

Given that the proposed request for accommodation complies with the housing codes and provides adequate parking to avoid impacts to adjacent properties, the identification of alternative accommodations to provide an equivalent level of benefit to the applicant were considered unnecessary in this instance.

The appellant has not identified an issue with regards to this consideration.

Factor 6: In the case of a determination involving a single-family dwelling, whether the household would be considered a single housekeeping unit if it were not using special services that are required because of the disabilities of the residents.

In 1979 the California Supreme Court held in *Adamson v. City of Santa Barbara* that under the states constitution's protection of the right of privacy, a local community cannot limit the number of people living together in a single housekeeping unit. The court, however, did not attempt to define a "single-housekeeping unit". Under the proposed accommodation, no physical modifications to the house are proposed in a manner that would alter its physical function as a single-family house capable of supporting a living arrangement other than a single-housekeeping unit as defined by the San Jose Municipal Code. Residents of this structure will share common facilities and living areas as well as sharing typical household duties.

Although no physical changes to the pre-existing house are proposed, the appellant argues that the proposed use would change the character of the single-family neighborhood particularly with regard to parking.

Factor 7: Whether the requested accommodation would impose an undue financial or administrative burden on the City.

One of the primary concerns that were raised by adjacent residents at the Director's Hearing and by the appellant related to disturbances that impact houses. The appellant has indicated that the operator has failed to be a good neighbor by not proactively addressing these issues when originally raised.

Subsequent to the filing of the appeal and per staff's request, the Police Department verified calls for service over the last three years and has found that two "disturbing the peace" calls were received. Additionally, a child abuse report was taken on February 15, 2001. A call related to a suspicious "open door" was taken in 1999 but found to be of no consequence. The Police Department did not indicate that the proposed use would cause a significant burden on their Department.

The City's Code Enforcement Division has determined that there are no present zoning violations at the subject site. A complaint that had been received on September 10, 2001 regarding potential overcrowding. The inspector concluded that no overcrowding was found.

The general obligation with monitoring the use and operation of the facility is the responsibility of the District Attorney's Office. Based on information from the DA's Office, the passage of Proposition 36 will likely result in many similar requests for such facilities distributed throughout communities in California. In this case, there is no evidence that the proposed facility will cause any undue financial burden on the City.

Factor 8: Whether the requested accommodation would require a fundamental alteration in the nature of a City program.

The requested Reasonable Accommodation for 18 total residents will not require a fundamental alteration in the nature of a City program, because it will not violate either the Housing or Building Codes, it will not require the modification of the existing structure that is compatible with the neighborhood and because the parking provided is sufficient for the requested residents.

CONCLUSION

Request for Reasonable Accommodation Requests such as this have often generated significant amounts of controversy. Because the nature of the proposed occupancy clearly would affect a legitimately identified protected class of “disabled” individuals as defined by the Federal and State Fair Housing Acts, the City has very limited ability to regulate or condition such requests in a manner that might otherwise appease the neighborhood. The City is not legally able to, nor should it outright deny a request for Reasonable Accommodation based on the concerns of a neighborhood about the potential “undesirable” nature or characteristics of prospective future occupants. The City’s primary ability to exercise any amount of control for uses such as proposed is essentially limited to assurances that the Housing and Building Codes are properly met with regards to the safe, maximum occupancy of a structure. Additionally, the City may provide for reasonable safeguards to protect the neighborhood from physical impacts such as excessive parking. The appellants have not shown any evidence that is contrary to the existing public record. No evidence has been cited that the potential impacts of the proposed RA are such that it would change the existing single family neighborhood.

RECOMMENDATION

Planning Staff recommends that the Planning Commission uphold the Director’s Final Determination and grant the Reasonable Accommodation Request for a Sober Living Environment to operate as described in the application for up to a total of 18 occupants comprised of 16 residents and 2 resident staff. Of the said residents, no more than five (5) shall be licensed drivers.

Proposed Findings

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The proposed project site is located in the R-1-5 Residential Zoning District.
2. This site has a designation of Low Density Residential (5.0 DU/AC) on the San Jose 2020 General Plan Land Use/Transportation Diagram.
3. The subject site is developed with one single-family detached dwelling unit.
4. The subject site is used for residential purposes.
5. The subject site is approximately 8,850 square feet in area.
6. The persons on whose behalf the application is being heard are considered disabled under the Fair Housing Act.

7. The applicant had requested the following accommodation to a code, policy or practice of the City of San Jose: Non single-family use in an R-1-5 Residential Zoning District: Sober Living Environment (SLE) for twenty-five (25) total residents, consisting of seven (7) adult residents, (2) two resident staff and up to (16) sixteen children of the residents.
8. The Housing Code limits the number of occupants on the second floor of this structure to (9) nine. A maximum of (18) eighteen total residents (adults and children) can be accommodated in this structure in conformance with the Housing Code.
9. An alternative accommodation for eighteen (18) residents (adults and children) is necessary to make housing available to the persons on whose behalf the application is made.
10. As represented in the floor plans dated July 26, 2001, none of the common areas of this residence (e.g., living room, dining room, and kitchen) have been altered or converted to bedrooms. The common areas are sufficient to promote the use for eighteen (18) total residents.
11. The illegally-constructed patio cover has been removed.
12. As represented in the floor plans dated July 26, 2001, the facility could accommodate on-site parking for up to 4 cars using the driveway apron and paved side yard. Additionally, there is sufficient street parking in front of the subject site to accommodate parking for (1) one additional car.
13. The parking appears to be sufficient for 18 total residents, consisting of sixteen (16) residents and two resident staff provided that no more than 5 of the total residents are licensed drivers.
14. The site is surrounded by single-family, detached residences.
15. The site had three calls to the Police Department for service/incidents over that past three years.
16. General Plan Policy specifies that residential social service programs should not be concentrated in a few areas, but should be distributed throughout the City. This area does not currently have an over-concentration of similar facilities or residential care homes.
17. The request is exempt from Environmental Review pursuant to Section 15301 of the California Environmental Quality Act (CEQA) Guidelines.
18. Appellants presented no evidence to show potential impact on surrounding uses.

Determination of Reasonableness

The focus of the Reasonable Accommodation request must be an objective analysis of the impacts associated with an increase in the total number of residents from eight (8), including two (2) resident staff as allowed “by right” under State law, to a total of 18 occupants comprised of fifteen 16 residents and 2 resident staff. Of the said residents, no more than five (5) shall be licensed drivers.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed request complies with Guidelines for Evaluating Requests for Reasonable Accommodation.

Finally, based upon the above-stated findings, the Planning Commission concludes the following:

1. The requested Accommodation will not impose an undue financial or administrative burden on the City.
2. Preservation of the single-family character of the zoning district of the subject property is a legitimate fundamental City interest.
3. The requested accommodation, which asked for fifteen (15) persons sleeping upstairs would require a fundamental alteration in the nature of a City program, in that it would violate the San Jose Housing Code by having more than 9 persons sleeping on the second floor, with only one exit available.
4. The interior and exterior characteristics of the subject property, as well as the location of the property within the neighborhood and access to transportation and other services, are adequate to accommodate the Alternative Accommodation consistently with the single-family character of the neighborhood.
5. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas.
6. The alternative accommodation granted for (18) eighteen total residents, including (16) sixteen residents (adults and children), (3) three of whom are licensed drivers and (2) two resident staff will not require a fundamental alteration in the nature of a City program.

Attachments:

Appeal Letter, Director's Final Determination, Police Department comments, Code Enforcement comments, County District Attorney's Office comments, Memo from City Attorney to City Council, Guidelines for Review of Requests for Reasonable Accommodation, Location Map.